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November 29, 2021

Via ECF

Honorable Edgardo Ramos, U.S.D.J.
U.S. District Court, S.D.N.Y.
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *So Young Cho v. Osaka Zen Spa, et al.*
Case No. 19-cv-07935

Dear Judge Ramos:

This office represents the Plaintiff, So Young Cho, in the above-referenced matter. We respectfully submit this letter to provide the Court with a status update in anticipation of the telephonic conference scheduled for December 1, 2021.

After the filing of the First Amended Complaint (“FAC”) on May 27, 2021, Defendants’ counsel, Mr. Eric Li¹, wrote an email on June 20, 2021, stating that he intends “to file a Motion to Dismiss in response to [the] FAC” and proposed a briefing schedule. In response, we requested “an additional 2 weeks for the opposition deadline” due to counsel’s unavailability.

On June 21, 2021, after Mr. Li requested affidavits of service of the FAC, Plaintiff’s counsel inquired whether Mr. Li will be accepting service on behalf of the defendants he represents pursuant to the Notice of Appearance filed on September 17, 2020 (see ECF Docket No. 30). In response, Mr. Li stated, “I just checked the docket and both defendants are currently unrepresented. You may want to request new summons to be issued first. Otherwise, even if I consent to service, there may still exist a defect. Once the summons is issued, I will speak to my client for a waiver of service of summons. No guarantee, but I will try.”

Even though we do not believe that new summons had to be obtained for filing a FAC against the same initially named defendants, we did request and obtain new Summons with regard to defendants Joshua Lee and Joseph Lee on July 6, 2021 (see ECF Docket No 53).

¹ By way of Notice of Appearance, Mr. Li appeared in the case on behalf of Defendants Spa Osaka, Inc. d/b/a Osaka Zen Spa, Boksil Paula Lee, Joshua Lee and Joseph Lee (see ECF Docket No. 30). ***No motion to withdraw has been filed by Mr. Li on behalf of any of the Defendants.***

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In the interim, while Plaintiff was waiting for Mr. Li to confirm whether he can accept service on behalf of the Defendants, Plaintiff served her discovery demands on July 7, 2021.

On July 13, 2021, Plaintiff's counsel followed up again with Mr. Li as to whether he can accept service on behalf of Joseph and Joshua Lee. In response, Mr. Li wrote, "Let me talk to my client and get back to you." Again, on October 11, 2021, Plaintiff counsel followed up again with Mr. Li as to whether he will be accepting service on behalf of Spa Osaka, Inc. d/b/a Osaka Zen Spa, Boksil Paula Lee, Joshua Lee and Joseph Lee (see ECF Docket No. 30). No confirmation was provided. As noted above in footnote 1, Mr. Li is still listed as counsel for all Defendants and has not filed a motion to be withdraw for any of the named Defendants. As such, we believe that the electronic filing of the FAC on May 27, 2021 should be considered proper and sufficient service on all Defendants.

On October 28, 2021, a telephonic pre-motion conference was held before Your Honor, where the foregoing issues were addressed with the Court. As a result of that conference, Your Honor extended the end of discovery by one month (see minute entry for proceedings held on October 28, 2021).

On November 24, 2021, we received certain responses to Plaintiff's discovery demands that were served on July 7, 2021, which we are still reviewing and will attempt to address and resolve with Defendants' counsel any deficiencies in their responses. However, it should be noted that Defendants have not produced a single document in response to Plaintiff's 56 different demands for documents and have not verified the responses to interrogatories. As a result of these late and incomplete responses, Plaintiff was unable to schedule or take any of Defendants' depositions. We also have not received Defendants' discovery demands, which we believe Defendants have waived their right to serve since they have not complied with this Courts' prior scheduling order and instructions.

Furthermore, on November 24, 2021, Defendants' counsel wrote an email to Plaintiff's counsel stating, "I believe my client Paula Lee is currently legally incompetent (Please see my response to Interrogatory 24). Not sure how you would like to proceed." Mr. Li further stated that Defendant Paula Lee is suffering from "Severe cognitive linguistic deficit" and he "believe[s] she is in assistant living and may be subject to guardianship." In response, Plaintiff's counsel wrote back stating, "Understood. I believe you may need to inform the Court so that a guardian can be assigned before we proceed." To which Mr. Li stated that "You are correct that the current mental state of Defendant may warrant a temporary stay until a legal guardian is appointed. Let me get more clarification before I write to the court."

We still await Mr. Li's further inquiry into the matter and we hope and anticipate to receive proper documentation pertaining to Defendant Paula Lee's assistant living situation and need for a the appointment of a guardian. For background purposes, it should be noted that it was represented by Defendants that Paula Lee had been staying with her son in Oregon during the pandemic, and this is the first time we hear of the need for a guardian.

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To date, Defendants' counsel has not confirmed whether he accepted service on behalf of defendants Joshua and Joseph Lee who he is still representing pursuant to the Court's docket; has not answered, responded or otherwise moved to the FAC on behalf of any of the Defendants; and has not served any discovery demands on behalf of any of the Defendants.

We thank the Court for its time and consideration of this matter.

Respectfully submitted,

/s/ Rudy A. Dermesropian

Rudy A. Dermesropian
Managing Member

cc: All counsel of record (via ECF)